

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	PS Docket No. 09-14
Eighth Annual Report to Congress)	
On State Collection and Distribution of)	
911 and Enhanced 911 Fees and Charges)	

**Comments of Joe Barrows
Executive Director—Kentucky 911 Services Board
State 911 Coordinator**

As the Executive Director of the Kentucky 911 Services Board, the state agency charged with “making 911 work with cell phones” (FCC Order in Docket NO. 94-102) and with “the development and implementation of Next Generation 911 Service” [KRS 65.7625 (3)(6)] I can attest to the value of good data and information upon which to make sound policy decisions in carrying out those duties. The 911 Services Board was given broad authority in 2011 to gather and report information regarding 911 funding and costs (KRS 65.7630). Using this authority, the Board issues annual surveys to PSAPs and local governments and collects information from cooperative providers which is used to respond to the FCC’s survey.

Both the FCC’s and our own information gathering efforts have improved each year in terms of participation, accuracy and thoroughness of responses.

The FCC should continue their information collection efforts, to modify the survey as needed and to encourage, promote and improve thorough and accurate reporting by seeking comments to the report.

With respect to the eighth report the FCC seeks comments on the impact that fee diversion has on the provision of 911 services.

- Fee Diversion-(State) the report continues to highlight fee diversion-(the transfer or use of 911 fees for non-related purposes) as one of its principle findings. After eight reports it’s now clear that diversion of 911 fees by states is not pervasive and is not a major contributing factor to the lack of available funds for providing 911 services (except in the very few states that do it consistently in large sums). Eliminating fee diversion does nothing to address 911 funding issues in the vast majority of states nor does it impact the provision of 911 services in those states. Recommendation: The FCC should continue to monitor fee diversion in its survey because there is almost unanimous agreement among 911 advocates and providers that fee diversion is “wrong” which can sway policy makers. Federal legislators and agencies should encourage “no diversions” by making it a condition for receiving federal grants. Otherwise, it’s time to look for other factors which have a much greater impact on 911 funding.
- Wireless Fee Contributions to 911 Services. Recent data collection in Kentucky shows that revenues from 911 fees pay for roughly 20% of the total costs to provide 911 services in the state even though the number of 911 calls originating from wireless devices approaches 80%. Yet, a wireline user is paying a 911 fee that is 2-3 times that of the state wireless fee. Recommendation: The FCC survey should continue to collect data on the total cost for 911 services in each state counting both state and local expenditures; the revenue sources that pay

for 911 services from all sources; and the relative contributions from each source to the total cost of providing 911 services.

The FCC also seeks comment on whether there is a diversion issue in states that have local or hybrid fee collection programs:

- Fee Diversion-(Local)-it will be difficult to get solid data on whether local jurisdictions engage in fee diversion in those states that have local or hybrid fee collection programs without getting others to respond to the survey. Many state 911 offices do not have the capability to respond authoritatively to the question. However, authoritative data will yield results similar to the state fee diversion evidence, that is, it is largely anecdotal, not pervasive, limited to a few jurisdictions and while eliminating it is desirable, doing so would have only negligible impact on the availability of 911 funds for the vast majority of local jurisdictions. Here's why—the following factors will be more representative of local 911 fee collection and distribution:
 - 911 services, offices, personnel tend to be at the bottom of the 'public safety' funding food chain (the reason you don't want funds diverted)-not a lot of funds being budgeted for 911 services.
 - Local funds in many jurisdictions have historically been raised by a local 911 fee on landline—the significant decline in landlines has resulted in a corresponding (significant) loss of dedicated 911 revenues—in most cases, the local government has had to increase their general fund contribution to 911 budgets to make up for this lost revenue.
 - The level of funding from state 911 fees available to spend at the state level or that are distributed back to local governments to support 911 services has not grown in recent years except in states that have raised their state 911 fee.

So, the composite picture of the revenues for 911 services in states with local or hybrid collection of 911 fees is likely to be a shrinking contribution from local 911 fees, a stagnant contribution from state 911 fees and an increasing contribution from local government general funds—such that the total contribution from specifically dedicated 911 fees is probably not sufficient to pay the largest one or two costs of a local PSAP's operations. By definition, local jurisdictions can't be diverting 911 funds, if the 911 funds they receive from state and local fees are not enough to pay for their operations.

This will be a much more common scenario than one in which a local 911 fee (plus state 911 fees) fully fund the 911 operations—in those rare jurisdictions where that is the case, any diversion would likely be, at worst, to support a collateral public safety purpose.

So, if fee diversion is not a pervasive issue at the state level and less likely to be as significant one at the local level, is there something else about the collection of 911 fees that needs exploring—something that impacts almost every state and in a significant enough way—to an extent that, if addressed, would provide financial resources for 911 services?

The FCC is looking for some other aspects of 911 fee collection that could prove valuable to states in terms of improving 911 funding because it seeks comment on the role of oversight and auditing; specifically whether additional efforts are needed to ensure that the collection of 911 fees are monitored and audited or to identify barriers towards effective oversight of fee collection.

- o Most states are limited in their auditing authority or if they have the authority they are limited in the actual capacity as a practical matter to conduct the audits and oversight of fee collection.

The best example is in collection and auditing of 911 fees on prepaid services.

While the auditing of providers of postpaid service is a relatively simple matter—“how many subscribers did you send a bill to this month and collect a 911 fee from? Did you remit that amount?”

The auditing or monitoring of the collection of 911 fees on prepaid service is not so easy—and is made more difficult by the method used to collect 911 fees on prepaid service. Forty jurisdictions have enacted “retail point of sale” legislation by which to collect 911 fees on prepaid service. Rather than simply having a provider of prepaid service multiply the state wireless 911 fee by its subscriber count to determine how much to remit, the point of sale collection methodology has retailers collect a 911 fee (a flat rate or percentage of the sales price) at the time of a purchase of prepaid service by an end user. There are inherent problems and inequities in this collection process in addition to the auditing and monitoring difficulties created.

You are taxing the same service/device in two different ways—a postpaid phone pays a set 911 fee based on its active existence each month—a prepaid phone pays a 911 fee based on the buying habits of the user. So, even if a fee is established that generates the correct amount of revenue, an individual may pay more or less than their share based on how often they purchase prepaid service.

Moreover, the point of sale fee needed to generate the correct amount of revenue has not been established in states that have adopted this legislation.

Everyone should agree that a cell phone regardless of what business model is used to load in air time ought to pay the state 911 fee and that the level of support (revenue generated) per device ought to be the same—that’s fair. But that is not the case today in those jurisdictions that have adopted point of sale.

The Task Force on Optimal PSAP Architecture (TFOPA) in its adopted final report (January 2, 2016) cited “credible evidence” in section 6.8.34 “Alleged under Recovery of Prepaid Wireless Fees” (fn 91, p 172) that prepaid services in states using the point of sale collection method were not generating the equivalent revenue that postpaid services generated. The premise being that, a thousand prepaid phones should generate the same amount of revenue in 911 fees as a thousand postpaid phones.

The research indicates that no state has set the prepaid point of sale fee at a level to collect the equivalent amount and that by not setting the correct fee states are “under collecting” from prepaid by an estimated \$276 million annually nationwide.

The TFOPA Working Group 3 Report- Funding Sustainment Model dated 12/2/2016 also references the research (p. 37) but allows how it needs to be vetted by experts—I agree. But some of the experts that might want to test the research would be in those states where the alleged under collection is severe enough, that if corrected, would generate significant 911 revenues simply by being fair—collecting the same fee from every device regardless of whether the minutes used are prepaid or postpaid.

But auditing and monitoring are hampered by the point of sale collection model in these ways:

- o Fees collected are remitted to state Department of Revenue, not the state 911 Board. DOR may or may not cooperate in auditing/monitoring.

- With point of sale you cannot identify which provider's subscriber engaged in a retail transaction generating a fee or how many times a retail transaction has occurred.
- The only way to estimate what ought to be collected is having accurate monthly subscriber counts from providers of prepaid service—very few states require this.
- Because prepaid providers can be “retailers” when selling airtime directly to end users over the internet a state would have to be able to audit that aspect of the sale of prepaid services to determine if a fee was being collected and properly “sourced” and remitted to the state—probably cost prohibitive.

So most states are going to be severely hampered in monitoring collection of fees on prepaid services and whether they are being fairly collected.

The industry has indicated that on average a user of prepaid services makes nine purchases a year so even if a state imposes a point of sale flat fee per transaction in the amount of the monthly postpaid fee, the state would only be collecting 75% of what they ought to be collecting.

Recommendation: Providers currently report wireless subscriber counts to the FCC by state. These counts are infrequently published and are not broken out by prepaid and postpaid designation. Anyone using these counts to do evaluation of collection of 911 fees (especially prepaid) is at best going to get ball park analysis.

The counts are also not provided by each prepaid service provider but in the case of MVNO's (and perhaps others) subscriber counts are reported by the providers whose network the MVNO subscriber is using—i.e. TracFone or Virgin Mobile subscriber counts may be provided by AT&T, Verizon and Sprint to add to the lack of clarity.

It would enable states to better monitor the collection of 911 fees on prepaid services if the FCC required every provider to provide their subscriber count of active CMRS connections, that a fair, consistent definition of active CMRS connection be used as a basis for the report and that this information be reported at least once a year on a consistent date.

Without that, most states will lack the basic data on which to monitor collection of 911 fees on prepaid service, and thus lack the information needed to correct the under collection of 911 fees on prepaid service and so continue to lose out on 911 revenue premised upon a fair taxing principle that each device ought to support the system the same.

The same research could be then used to determine more accurately how much revenue could be raised by increasing the fee on wireless service. The research referred to already indicates that if the wireless 911 fee (on prepaid and postpaid services) were raised to 41.00 per month in every state where it is currently less than \$1.00 per month and the disparity between prepaid and postpaid was corrected there would be over one billion dollars in new 911 revenues available nationally (in varying amounts state by state).

Again having accurate data on subscriber counts would enable states to make this determination as to whether this option would generate 911 revenues sufficient to impact their modernization efforts particularly in the short term.

While there has been much improvement in the collection of data through the FCC report, the reality is that many state 911 Boards/Offices that are used to collect the data are small operation without capacity or authority to do as much as needs to be done, particularly when dealing with large regional, national and even international service provider companies. The FCC and its clout is a needed ally.

Respectfully Submitted,



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P.S. As additional 'Comments' please note that two matters with respect to information in the report provided by Kentucky should be clarified. First, refer to the Kentucky section of Table 11—State Description of Service Type and Associated Fees (page 36). Reporting on "prepaid" service type the fee column reads--"Impose 70¢ per transaction, but collect 30¢ per transaction". A reader could incorrectly interpret that to mean Kentucky collects a 30¢ fee per (retail) transaction when it should be collecting a 70¢ fee per (retail) transaction. That is not the meaning. During the time period covered by this report, Kentucky did not collect its 911 fee with respect to prepaid services by imposing a fee at the 'point of sale'. The actual response submitted to the survey question regarding prepaid fees reads... "Impose 70¢, effectively collect 30¢" ... which is different than the response printed in the report. The explanation of this response is that in 2015 Kentucky collected a 911 fee which was statutorily set at 70¢ per CMRS connection (regardless of whether the connection was prepaid or postpaid).

However, instead of simply multiplying its monthly subscriber count by 70¢ and remitting the total, providers of prepaid service used a statutory revenue formula to calculate the monthly fee remittance obligation. That revenue formula (prepaid revenue ÷ 50 x 70¢ = remittance due) did not generate 70¢ per prepaid cell phone per month; it "effectively" collected around 30¢ per month per prepaid device. This faulty formula (once referred to as the Tennessee Model) resulted in a \$3-4 million "under collection" of 911 revenues for prepaid services annually in Kentucky.

For the second Kentucky clarification refer to Appendix B Overview of Total State 911 Fees 2009 to 2016 Reports (page 100). You will notice a large increase between the 2010 report and the 2011 report which is consistent for the remaining reporting years including the 2016 report. That is because the 2009 and 2010 report shows only the total of *state* 911 fees collected on CMRS connections while the total reported for years 2011 through 2016 includes *both* the state 911 fee on cell phones that is collected by the state and local 911 fees (typically a landline fee) collected by local governments across the state. This information was provided in response to questions F1 and 2 of the survey (page 109).

If the title to the table "...Total State 911 fees" is intended to mean just the total 911 fees collected from a *state* imposed 911 fee, then the totals listed for years 2010 through 2016 are incorrect as they reflect *both* state and locally imposed 911 totals. The correct totals for the reported years would be:

2011-- \$24,758,585.50

2012--\$24,522,026.23

2013-- \$25,135,485.51

2014--\$25,306,382.67

2015--\$26,520,946.59

2016--\$26,438,749.43

These totals would reflect the amount of funds deposited in the state CMRS fund which is administered by the Kentucky 911 Services Board. If the table intends to reflect the total 911 fees collected in the state (both local and state imposed fees) then the totals in years 2011 through 2016 are correct as reported and the amounts for 2009 and 2010 should be bumped up about \$30 million each to reflect an estimate of local 911 fees collected in those years.